

RESOLUTION NO. 2018-19

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA APPROVING A SETTLEMENT AGREEMENT BETWEEN THE VILLAGE OF KEY BISCAYNE AND THE NATIONAL MARINE MANUFACTURERS ASSOCIATION IN THE PENDING ACTION STYLED *VILLAGE OF KEY BISCAYNE V. CITY OF MIAMI, ET AL*, MIAMI-DADE COUNTY CASE NO. 15-2997-CA-01 (21); PROVIDING FOR AUTHORIZATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on January 8, 2015, the City Commission for the City of Miami (“City”) adopted Resolution No. 14-01271 and voted to enter into a revocable license agreement with the National Marine Manufacturers Association (“NMMA”), allowing NMMA to use City-owned property surrounding the Miami Marine Stadium, located at approximately 3501 Rickenbacker Causeway (the “Property”), for the purpose of hosting the Miami International Boat Show (the “Boat Show”); and

WHEREAS, on January 27, 2015, the Village of Key Biscayne (the “Village”) Council adopted Resolution No. 2015-4 authorizing the commencement of legal action against all necessary and/or appropriate parties from developing and using the Property in any manner which is in violation of law, or restrictions limiting the use of the Property; and

WHEREAS, the Village initiated certain litigation against the City in Miami-Dade County Circuit Court under Case No. 15-2997-CA-01 (21), seeking, among other relief, declaratory and injunctive relief pertaining to allegations that the manner of operation of the Property for the Boat Show constitutes a public nuisance (the “Lawsuit”); and

WHEREAS, the NMMA filed a motion to intervene and, on August 26, 2016, was granted the right to intervene in the Lawsuit; and

WHEREAS, the NMMA proposed a settlement agreement between the Village and the NMMA that establishes methods of transportation and maintenance of traffic plans for future Boat Shows with the intent to minimize disruptions to traffic flow on the Rickenbacker Causeway that may unreasonably impede traffic to and from the Village and the mainland; and

WHEREAS, the Village Council deems it to be in the best interest of the public to authorize a settlement between the Village and the NMMA related to the pending public nuisance claims in the Lawsuit, on the terms specified in the Settlement Agreement attached hereto as Exhibit “A” (the “Settlement Agreement”).

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF KEY BISCAYNE, FLORIDA AS FOLLOWS:

Section 1. **Recitals Adopted.** That each of the recitals stated above is hereby adopted and confirmed.

Section 2. **Approval of Settlement Agreement.** That the Settlement Agreement between the Village and the NMMA in the form attached hereto as Exhibit “A” is approved.

Section 3. **Authorization of Village Officials.** That the Village Manager is authorized to execute the Settlement Agreement and all documents deemed necessary to implement the intent of this Resolution, subject to approval by the Village Attorney as to form, content, and legal sufficiency.

Section 4. **Effective Date.** That this Resolution shall be effective immediately upon adoption.

PASSED AND ADOPTED this 8th day of May, 2018.


MAYOR MAYRA PEÑA LINDSAY

ATTEST:


JENNIFER MEDINA, CMC
VILLAGE CLERK



APPROVED AS TO FORM AND LEGAL SUFFICIENCY


VILLAGE ATTORNEY

SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT ("**Agreement**") is made, entered into, and effective as of this 8th day of May, 2018 (the "**Effective Date**"), by and between the Village of Key Biscayne, Florida ("**Village**") and National Marine Manufacturers Association, Inc. ("**NMMA**") (each a "**Party**" and together, the "**Parties**").

RECITALS

WHEREAS, on January 8, 2015, the City Commission for the City of Miami ("**City**") adopted Resolution No. 14-01271 and voted to enter into a revocable license agreement with NMMA, allowing NMMA to use City-owned property surrounding the Miami Marine Stadium, located at approximately 3501 Rickenbacker Causeway (the "**City Property**"), for the purpose of hosting the Miami International Boat Show (the "**Boat Show**") commencing in early 2016;

WHEREAS, the Village initiated certain litigation in Miami-Dade County Circuit Court against the City under Case No. 15-2997 CA 09 (the "**City Lawsuit**"), seeking *inter alia* declaratory and injunctive relief pertaining to allegations that the manner of operation of the City Property for the Boat Show constitutes a public nuisance (the "**Public Nuisance Claim**");

WHEREAS, NMMA filed a motion to intervene, and on August 26, 2016, was granted the right to intervene, in the City Lawsuit;

WHEREAS, during the pendency of the City Lawsuit, the Parties convened both formal and informal settlement discussions, along with the City, leading to their mutual decision to stay proceedings, tolling time-periods and reserving all rights, while negotiating in detail a comprehensive settlement agreement on which to settle the City Lawsuit (the "**Draft Agreement**");

WHEREAS, despite the Parties substantial efforts, the City Commission of the City did not approve the Draft Agreement;

WHEREAS, the City Lawsuit is set for a trial for the trial period beginning on June 4, 2018, with a deadline to conclude all discovery of fifteen (15) days prior to the first day of the trial period (the "**Discovery Cutoff**");

WHEREAS, if the Public Nuisance Claim remains an issue to be resolved at the scheduled trial in the City Lawsuit, the Parties will need to explore through discovery many factual issues relating to the Public Nuisance Claim in advance of the Discovery Cutoff;

WHEREAS, the Parties now wish to amicably resolve the pending Public Nuisance Claim through the execution of this Agreement, and have agreed to settle their differences as they relate to the Public Nuisance Claim solely to avoid further costs associated with continued litigation of the Public Nuisance Claim in the City Lawsuit, and without admitting liability or waiver.

NOW, THEREFORE, in consideration of the foregoing, it is hereby agreed as follows:

AGREEMENT

1. **Recitals.** The foregoing recitals set forth above are true and correct and constitute part of this Agreement.

2. **Dismissal of Public Nuisance Claim and Other Litigation.** Within two (2) business days from the Effective Date, Village shall cause to be filed a Notice of Voluntary Dismissal, without prejudice, of the Public Nuisance Claim in the City Lawsuit. The dismissal of the Public Nuisance Claim will have no impact on any of the Village's remaining claims in the City Lawsuit, or claims generally.

3. **Maintenance of Traffic for Future Boat Shows.** NMMA covenants and agrees that it will adhere to a comprehensive transportation and maintenance of traffic ("**MOT**") plan for all future Boat Shows on the City Property. The Parties agree that each MOT should be developed so as to: (i) minimize disruptions to traffic flow on the Rickenbacker Causeway that may unreasonably impede traffic to and from the island of Key Biscayne and the mainland, and (ii) achieve a traffic flow result largely consistent with the MOT plans developed by the City and Miami-Dade County, in collaboration with the Village and the NMMA, and implemented for the 2016 and 2017 Boat Shows.

The NMMA's agreement to adhere to MOT plans consistent with the objectives identified in this paragraph will include the following:

- a. **Alternative Modes of Transportation:** NMMA agrees to promote and provide water-taxis and shuttle buses as alternative modes of transportation to reduce traffic impact on the Rickenbacker Causeway. The NMMA agrees to promote park and ride off-site parking on the mainland, in addition to promoting limited pre-paid parking on Virginia Key, and alternate modes of transportation with all online ticket sales.
- b. **Cooperation:** NMMA agrees to consult with the Village Chief of Police, or the Chief of Police's designee, in connection with the development of the MOT for the Boat Show. The NMMA also agrees to provide the Village Chief of Police with a final MOT plan in advance of all future Boat Shows on the Property, and shall do so as soon as reasonably possible following NMMA's receipt of the final MOT plan.
- c. **Signage:** The MOT provides for variable message signs to guide attendees to appropriate routes to the Boat Show from I-95, satellite parking sites, and turn around areas. Signage will include, but not necessarily be limited to, the following:
 - i. Signage at the Rickenbacker Causeway toll booth entrance, as approved in the MOT;
 - ii. Signage along I-95 and the Rickenbacker Causeway directing Boat Show traffic to available off-site public parking and park and ride locations; and
 - iii. Temporary signage along Rickenbacker Causeway directing traffic to Boat Show traffic lanes, parking lots, turning lanes and Boat Show Entrance.

- d. **Traffic Control:** The MOT provides designated lanes for Boat Show traffic and thru traffic to Key Biscayne, so as to avoid any unreasonable impediments to the flow of traffic. The NMMA will use its best efforts to work with the County to ensure that travel times and average speeds recorded on Boat Show days are reasonably consistent with those recorded during the 2016 and 2017 Boat Shows. To the extent reasonably possible, the MOT will be developed to manage and limit left turns in either direction so as to minimize interruptions on the Causeway.
- e. **Water-Taxis:** The NMMA will only use licensed water-taxi operators in the number and class permitted in the County-approved Marine Facilities Operating Permits (MOPs).
- f. **Bus Transportation:** The NMMA will use bus dispatchers to aid in preventing buses from stacking up within the Rickenbacker Causeway, loading and unloading passengers, and maintaining a fluid shuttle bus circulation.
- g. **Car Service Drop-Off/VIP Prepaid Parking:** Drop off for Taxi, Uber, and other for-hire car services and prepaid VIP parking will manage and minimize stacking as approved in the MOT to reduce traffic impact on the Rickenbacker Causeway. The NMMA will work with the City of Miami taxi regulators, and other for-hire car operators such as Uber and Lyft, to establish designated drop-off points on the north side of Rickenbacker Causeway to guard against stacking within the Rickenbacker Causeway.
- h. **Parking on Virginia Key:** The NMMA will use best efforts not to exceed 4,000 pre-paid parking spaces per day on Virginia Key and agrees that the total number of pre-paid parking spaces on Virginia Key will not exceed 4,500 parking spaces per day.
- i. **Public Safety and Traffic Control Personnel:** The NMMA will pay for all appropriate law enforcement personnel to direct traffic on Rickenbacker Causeway as required in the MOT.
- j. **Pedestrian Fencing:** The MOT shall provide for the use of pedestrian fencing along the south side and other areas as appropriate along the Rickenbacker causeway to promote safe crossings, discourage unauthorized pedestrian crossing and passenger drop-off, and to discourage Boat Show parking in the Hobie Beach parking lot.

The Parties understand that some of the obligations contained herein are subject to approval and cooperation from the appropriate governmental authorities. The NMMA will use their best efforts to obtain approval and cooperation from the appropriate governmental authorities to meet the objectives and obtain the appropriate approvals identified in this Agreement.

4. **Environmental Protection and Compliance.** NMMA covenants and agrees to abide by all conditions related to environmental protection contained within the Permit and the Miami-Dade County Class I Permit # CLI-2017-0185, as may be modified for future Boat Shows (the "**DERM Permit**"). NMMA further agrees to use its best efforts to: (i) monitor sea-trial traffic related to the Boat Show to aid compliance with the authorized designated travel routes outlined in the DERM Permit and other legal waterway routes; and (ii) work with the appropriate governmental agencies to aid in preventing entry or disruption to the Bill Sadowski Critical Wildlife Area, including additional signage and/or monitoring, if necessary.

5. **Future Challenges.** The Village agrees that, following the Effective Date, it shall not file any lawsuit or bring any claim against the NMMA based on allegations that the 2016, 2017, or 2018 Boat Shows constituted a public nuisance. Notwithstanding the foregoing, the Parties agree that no provision in this Agreement, including the Village's voluntary dismissal of the Public Nuisance Claim in the City Lawsuit and the Village's voluntary dismissal of the Other Litigation, pursuant to Paragraph 2, shall act as a bar to the Village's ability to assert a future challenge against the City or NMMA or otherwise relating to the Boat Show to be conducted in 2019 or subsequent years, or relating to other uses of Virginia Key.

6. **Merger and Integration.** This Agreement incorporates, embodies, expresses, and supersedes all agreements and understandings between the Parties. All Parties agree and represent that there are no representations upon which they relied in entering into this Agreement that are not set forth in writing in this Agreement.

7. **Governing Law.** This Agreement shall be deemed to constitute a contract made and entered into under the laws of the State of Florida. For all purposes, this Agreement shall be construed and governed in accordance with the laws of the State of Florida without regard to its principles on conflict of laws. The Circuit Court in Miami-Dade County, Florida shall be the sole and exclusive jurisdiction to enforce the terms of this Agreement.

8. **Severability.** If any provision or term of this Agreement is deemed to be illegal or unenforceable in any respect, such provision or term, to the extent illegal or unenforceable shall not affect any other provision or term hereof, and this Agreement shall be construed as if such provision or term had never been contained herein.

9. **Amendment.** This Agreement may be amended only by a subsequent agreement, in writing, signed by the Party to be charged.

10. **Comprehension of Terms.** The Parties hereby acknowledge that they have entered into this Agreement freely and voluntarily and without coercion or undue influence. The Parties have each retained their own counsel who has reviewed and participated in the drafting of this Agreement. Accordingly, this Agreement is deemed to have been jointly drafted by the Parties, and any uncertainty or ambiguity shall not be construed for or against any Party as an attribution of drafting by any Party.

11. **Third Party Beneficiaries.** There are no express or implied third-party beneficiaries under this Agreement.

12. **Headings.** The titles and headings of the various sections of this Agreement are intended solely for convenience of reference and shall not be construed as an explanation, modification, or intended construction of any terms or provisions of this Agreement.

13. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which collectively shall be deemed one and the same instrument. Executed counterparts of this Agreement delivered by facsimile or electronic mail shall be deemed original documents for all purposes.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the Effective Date.

ATTEST:

VILLAGE OF KEY BISCAYNE, FLORIDA

By: Jennifer Medina
Village Clerk

Print Name: Jennifer Medina

Date: 5/8/18



By: Joel C. Gilbert
Print Name: Joel C. Gilbert
Title: Village of Key Biscayne
Date: 5/8/18

**NATIONAL MARINE MANUFACTURERS
ASSOCIATION, INC.**

By: _____

Print Name: _____

Title: _____

Date: _____

Myriam Restrepo
Witness Signature
Myriam Restrepo
Printed Name
5/8/18
Date

Witness Signature

Printed Name

Date